IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

DOROTHY ROBINSON,)	
)	
Plaintiff,)	
)	
-VS-)	Case No. CIV-20-0919-F
)	
S. YOUNG, et al.,)	
)	
Defendants.)	

ORDER

On October 19, 2021, the magistrate judge entered a Report and Recommendation recommending plaintiff, Dorothy Robinson's amended complaint, alleging an individual capacity claim under the Eighth Amendment against defendants S. Terrell and Traci Carney for injunctive relief in the form of the issuance of a CPAP machine, be dismissed as moot. Doc. no. 30.

On November 9, 2021, the court entered an order granting plaintiff an extension of time until December 1, 2021 to file an objection to the Report and Recommendation. Like the magistrate judge, the court specifically advised plaintiff that failure to make timely objection to the Report and Recommendation waives the right to appellate review of both factual and legal issues contained in the Report and Recommendation. Doc. no. 32.

The court is in receipt of plaintiff's objection to the Report and Recommendation. Doc. no. 33. The objection was received and filed of record on December 6, 2021, five days late. Plaintiff states that she is no longer housed in FCI Danbury; instead, she has been released to home confinement. Consequently, it appears that plaintiff is not entitled to the application of the prisoner mailbox rule to her filing. Because plaintiff's objection is not timely filed, the court finds that plaintiff has waived the right to appellate review of both factual and legal issues

contained in the Report and Recommendation. The court therefore accepts, adopts, and affirms the Report and Recommendation. The individual capacity claims brought under the Eighth Amendment against defendants S. Terrell and Traci Carney for injunctive relief in the form of the issuance of a CPAP machine will be dismissed as moot. ¹

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Shon. T. Erwin (doc. no. 30) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Plaintiff's individual capacity claim under the Eighth Amendment against defendants S. Terrell and T. Carney for injunctive relief in the form of the issuance of a CPAP machine, is **DISMISSED** as **MOOT**.

IT IS SO ORDERED this 9th day of December, 2021.

STEPHEN P. FRIOT

UNITED STATES DISTRICT JUDGE

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¹ Even if plaintiff's objection were timely filed, the court would still accept, adopt, and affirm the Report and Recommendation. The magistrate judge's analysis with respect to plaintiff's remaining individual capacity claims for injunctive relief is correct. Plaintiff's objection is without merit.